S.B. CIVIL WRIT PETITION NO.4812/2004

Heera Lal vs. State of Raj. and others.

Date : 12.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. R.S. Chundawat, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 5.10.2004 (Annex.11) passed by the Divisional Commissioner, Udaipur by which the Divisional Commissioner, after going through the enquiry report, held that the petitioner gave birth to two children – one on 15.6.1997 and another on 21.7.2001 i.e. after the cut off date i.e. 27.11.1995, which makes the petitioner disqualified to hold the post of Sarpanch because of the reason that as per Section 19 of the Rajasthan Panchayati Raj Act, 1994 (for short the "Act"), a person, who has more than two children and one children born after cut off date, is not a qualified person to be elected for the post of Sarpanch.

It appears that there were allegation against the petitioner that he gave birth to two children on the dates mentioned above and before that, he had two children, therefore, at the time of election, he was having four children.

The petitioner came with an explanation that the petitioner contracted Nata with a lady Anchi. The petitioner's case is that he had two children from his marriaged with Mohani and two children came with Smt. Anchi, therefore, according to the petitioner, total number of his children is only two.

It appears from the enquiry report Annex.1 that the enquiry officer, after recording statement of number of persons, reached to the conclusion that all four children are of petitioner himself and the plea taken by the petitioner is highly improbable. The plea was found to be improbable because of the reason that the enquiry officer did not believe the contention of the petitioner that two daughters came with Anchi when petitioner contracted nata with her and thereafter, Anchi left the petitioner leaving behind her two daughters.

I have considered the submissions of learned counsel for the petitioner.

It appears that the enquiry report is based on the evidence and the finding has been recorded by the appreciation of evidence. The petitioner tried to submit that there are documentary evidence like agreement (Annex.3) which indicates that the petitioner contracted nata and two daughters came with the lady with whom the petitioner contracted nata. Since the document is a private document, its credibility cannot be judged while examining the question of issues of the petitioner and the

petitioner cannot be permitted to raise disputed questions of fact in writ petition.

In view of the above discussion, I do not find any merit in this writ petition and the same is hereby dismissed.

The record received may be sent to the concerned department forthwith.

(PRAKASH TATIA), J.

S.Phophaliya